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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/145,255	09/01/1998	LEWIS M. NASHNER	469/129	5752
2101	7590	08/08/2006	EXAMINER	
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			HINDENBURG, MAX F	
		ART UNIT		PAPER NUMBER
		3736		718

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/145,255	NASHNER, LEWIS M.
	Examiner	Art Unit
	Jonathan ML Foreman	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 March 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-3,5-9 and 15 is/are allowed.
- 6) Claim(s) 4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 20060803.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: PTO/SB/51S.

## DETAILED ACTION

The After Final Amendment filed 3/7/03 has been entered. The Examiner acknowledges claims 10 – 14 as being cancelled, claim 15 as being amended and the amendment to the paragraph starting on line 4 of column 1. However, new grounds of rejection are contained within this Office Action. Accordingly the finality of the office action mailed 9/10/02 has been withdrawn and this action has been made Non-Final.

### *Terminal Disclaimer*

1. The terminal disclaimer filed on 12/9/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 4,738,269 has been reviewed and is NOT accepted. The terminal disclaimer filed 12/9/02 fails to identify the instant application by serial number. However, the amendment filed 3/7/03 has cancelled claims 10 – 14 which were the basis for the nonstatutory double patenting rejection.

### *Claim Objections*

2. Claim 15 is objected to because of the following informalities: lines 6 - 7 state, “configuring the support surface on which the subject’s second leg rests to permit rotation of the subject’s foot associated with the second leg as the subject sways; and...”. As agreed upon in the interview between examiner Pamela Wingood, Max Hindenburg and applicant’s representative Elizabeth Morano on March 10, 2003, lines 6 - 7 should be amended as follows to better define the method step: ~~“configuring the support surface on which the subject’s second leg rests to permit permitting~~ rotation of the subject’s foot associated with the second leg as the subject sways; and...”. Appropriate correction is required. Because such an amendment encompasses more than a mere spelling or grammatical change, a supplemental oath/declaration averring to the non-deceptive intent of that error is needed (See Attached PTO/SB/51S).

***Specification***

3. The disclosure is objected to because of the following informalities: The paragraph starting on line 4 of column 1 should include proper series identifiers for the application numbers mentioned in lines 2, 3, 4 and 6. Also, the proper U.S. Serial Number and the status for the application mentioned in lines 7 – 8 should be included rather than an attorney docket number.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,416,293 to Anderson et al. in view of U.S. Patent No. 3,894,437 to Hagy et al.

In regards to claim 4, Anderson et al. discloses a perturbing means (20) for disturbing the subject's position in equilibrium, wherein the perturbing means includes a support means (24), independently movable linearly along a horizontal axis, for supporting a subject in equilibrium and sensing means (Col. 4, lines 36 – 40) for sensing the degree of contractile activity in a plurality of muscles as the subject attempts to restore equilibrium. Anderson et al. discloses the data acquired by the sensing means being for use in diagnosis of podiatric problems relating to gait analysis (Col. 1, lines 42 – 44). However, Anderson et al. fails to disclose an analyzing means for determining at least one of the order or distributional relationship of such contractile activity. Hagy et al. discloses sensing means for use in diagnosis of podiatric problems relating to gait analysis for sensing the

degree of contractile activity in a plurality of muscles (Col. 3, lines 40 – 43) as the subject attempts to restore equilibrium. Hagy et al. discloses an analyzing means (Col. 3, lines 43 – 46) for determining at least one of the order or distributional relationship of such contractile activity. It would have been obvious to one having ordinary skill in the art to modify the device as disclosed by Anderson et al. to include an analyzing means for determining at least one of the order or distributional relationship of such contractile activity as taught by Hagy et al. in order to analyze certain elements of the gait of a walking subject (Col. 3, lines 46 – 50).

***Allowable Subject Matter***

6. Claims 1 – 3, 5, 7 –9 and 15 allowed. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 3,859,736 to Hill et al. cited in the parent application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMLF

  
MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700